

12 October 1945

MEMORANDUM

Delegation of Authority

TO: Director

FROM: Office of General Counsel

SUBJECT: Certification of Vouchers for the Expenditure of Confidential Funds

1. On 20 September 1945 the President issued Executive Order No. 9621, effective 1 October 1945, in which he terminated the Office of Strategic Services and disposed of its functions.

2. This order reads in part as follows:

"By virtue of the authority vested in me by the Constitution and Statutes, including Title I of the First War Powers Act, 1941, and as President of the United States and Commander in Chief of the Army and Navy, it is hereby ordered as follows;

"1. * * *

"2. * * *

"3. All functions of the Office not transferred by paragraph 1 of this order, together with all personnel, records, property, and funds of the Office not so transferred, are transferred to the Department of War; and the Office, including the office of the Director of Strategic Services, is terminated. The functions of the Director of Strategic Services and of the United States Joint Chiefs of Staff, relating to the functions transferred by this paragraph, are transferred to the Secretary of War. * * * *"

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3. Public Law 156 of the 79th Congress (National
[redacted] for Agencies Appropriation Act, 1946) in appropriating
[redacted] for the Office of Strategic Services for the
fiscal year, 1946, specifies:

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"Provided, That [redacted] of this appropriation may be expended without regard to the provisions of law and regulations relating to the expenditure of Govern-

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"S 605. Suspension of conflicting laws; restoration
of duties and powers to bureaus, offices, etc., upon ter-
mination of sections"

"All laws or parts of laws conflicting with the pro-
visions of this title (sections 601-605 of this Appendix)
to the extent of such conflict suspended while this
title (sections 601-605 of this Appendix) is in force."

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"Upon the termination of this title (sections 601-
605 of this Appendix) all executive or administrative

[redacted]
of the President under this title (sections 601-605 of
this Appendix) to the contrary notwithstanding." (50
App. USCA 605)

5. We must face therefore the historical position
of OSS in relation to this statute in the following manner:

(a) The office of the Coordinator of Information
was established by Executive Order of 11 July 1941.
Then the President by order dated 13 June 1942 de-
clared that the office of the Coordinator of Infor-
mation exclusive of the portion transferred to OWI
should thereafter be known as the Office of Strategic
Services. Therefore, the First War Powers Act is
applicable to OSS as an agency whose predecessor
was in existence on 18 December 1941.

(b) By the provisions of the First War Powers Act
as above quoted, the President does have the authority
to transfer a portion of OSS to the War Department
and to transfer to the Secretary of War the functions
of the Director of the Office of Strategic Services.

(c) The Secretary of War may exercise the powers
granted to the Director of OSS in the National War
Agencies Appropriation Act, 1946, provided that the
funds are expended only for the purposes for which
they were appropriated in said act.

6. The exercise of the power to certify vouchers for
the expenditure of confidential funds calls for the highest dis-
cretion and judgment. It is certainly not a merely administra-
tive function. It is a well recognized principle of the law
applying to officers of the Government that where a discre-
tionary power is granted to the head of a department it must
be exercised by the head of the department or an assistant or

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1. In view of the wording of the current War Department Appropriation Act, it is the opinion of this office that funds made available to CIC from the War Department appropriation may not be used for the payment of tuition of CIC employees upon the basis contained in the Act to pay such expenses for civilian employees in and under the War Department and Military Establishments. Since authority is granted in other provisions of the Appropriation Act to pay tuition expenses, such authority is likewise available to military personnel or civilian employees in and under the War Department and Military Establishment.

2. Therefore, this office is of the opinion that tuition and other related expenses incident to the sending of an employee to a language school may not be paid from the funds available to CIC where there is no operational necessity. If it is alternatively determined that it is necessary to send a civilian employee of CIC to a school to acquire certain qualifications or knowledge essential in the performance of his duties which are not otherwise available, there would appear to be a legal objection to the payment of tuition costs and other related expenses from the unvouchered funds available to CIC. The appropriate use of funds for this purpose would be based on a determination that such expenditures are necessary in the operation of CIC and should be supported by the facts in each particular case.

3. It is the opinion of this office that the approval for the disbursement of unvouchered funds for such a purpose necessarily must be from the Director, since current Special Funds Regulations do not provide for the payment of such expenses.

JOHN S. WARNER
Assistant General Counsel

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